IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7108 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BRUHAD SAURASHTRA SAFAI KAMDAR MANDAL & 2 - Petitioner(s)
Versus
CHITAL JASVANTGADH TIMBA GRAM PANCHAYAT & 2 - Respondent(s)

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Appearance :

MR GM JOSHI for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 3.
RULE SERVED for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction and/or order

directing the respondent No.1 Panchayat to consider the case of the petitioner Nos.2 and 3 and other similarly situated sweepers according to their length of service for promotion to the post of Mukadam/ Ward peon/Supervisor. It is also further prayed for an appropriate writ, direction and/or order quashing and setting aside the action of the respondent No.1 Panchayat in appointing the respondent No.2 as a daily wager/Mukadam/Ward peon/Supervisor ignoring the legitimate claims of the petitioners and other similarly situated sweepers.

2. It is the contention on behalf of the petitioners that though the respondent No.2 was serving as a daily wager on the post of tractor labourer, he has been appointed and performing their duties as a Mukadam/Ward peon/Supervisor since 1-7-1997 ignoring the seniority of the petitioner Nos.2 and 3 and other similarly situated sweepers. Though served, nobody appears on behalf of the respondent Nos.1 and 2 and the allegations against the respondent No.1 and against the appointment of the respondent No.2 have not been controverted.

3. Shri GM Joshi, learned advocate appearing on behalf of the petitioners and Shri DA Desai, learned AGP appearing on behalf of the Secretary, Panchayat, Rural Housing and Rural Development Department, State of Gujarat have jointly submitted that now the post of Mukadam which is higher post than the sweeper is required to be filled in as per Class IV Employees

(In inferior Service of Panchayat Service)Recruitment Rules, 2006. Under the circumstances, the respondent No.1 is directed to fill in the post of Mukadam, if there are vacant post and the respondent No.1 proposes to fill up the said post by following the Class IV Employees (In inferior Service of Panchayat Service)Recruitment Rules, 2006 only. So far as the appointment of respondent No.2 is concerned, it is the case on behalf of the petitioners that though the respondent No.2 was serving as a daily wager, he has been appointed and/or he is working as a Mukadam/ Supervisor since 1-7-1997 ignoring the claims of the petitioner Nos.2 and 3 and other similarly situated sweepers. Under the circumstances, if the respondent No.2 is still continued as a Mukadam, in that case and more particularly when the averments in the petition are not controverted, the respondent No.1 is directed to discontinue the services of the respondent No.2 as a Mukadam and to fill up the post of Mukadam as stated above considering the aforesaid rules. Rule is made absolute to the aforesaid extent. No costs.

(M.R. SHAH, J.)

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